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TITLE 39 - PUBLIC OFFICERS AND EMPLOYEES

Chapter 05 - QUALIFICATIONS, APPOINTMENTS, AND TENURE

Revisors Notes - The provisions of this title were redrafted in 1984 to remove personal pronouns pursuant to Sec. 4, ch. 58, SLA 1982, and to make other minor word changes. Minor word changes were also made throughout the title in 1987.

Sec. 39.05.060. APPOINTMENT, QUALIFICATIONS, AND TERMS OF OFFICE OF MEMBERS OF DEPARTMENTAL BOARDS, COUNCILS, OR COMMISSIONS.

(a) Each member of the following shall be a citizen of the United States:

- (1) Local Boundary Commission;
- (2) Alcoholic Beverage Control Board;
- (3) [Repealed, Sec. 23 ch 61 SLA 1995].
- (4) [Repealed, Sec. 13 ch 43 SLA 1994].

(b) The governor shall appoint each member on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership. Appointments are subject to confirmation by a majority of the members of the legislature in joint session.

(c) [Repealed, Sec. 56 ch 21 SLA 1985].

(d) A vacancy occurring during a term of office is filled in the same manner as the original appointment is made and, except as provided in AS 39.05.080 (4), is filled for the balance of the unexpired term. Except as otherwise provided by law, each member holds office at the pleasure of the governor notwithstanding the member's term. (§. 6 ch 64 SLA 1959; am § 2 ch 34 SLA 1960; am § 2 ch 89 SLA 1964; am § 2 ch 90 SLA 1967; am § 10 ch 96 SLA 1967; am § 1 ch 107 SLA 1969; am § 30 ch 46 SLA 1970; am § 2 ch 121 SLA 1971; am § 36 ch 124 SLA 1975; am § 34 - 36 ch 206 SLA 1975; am § 72 ch 59 SLA 1982; am §§ 56, 57 ch 21 SLA 1985; am § 67 ch 14 SLA 1987; am § 7 ch 121 SLA 1992; am § 116 ch 4 FSSLA 1992; am § 13 ch 43 SLA 1994; am § 16 ch 61 SLA 1995; am § 13 ch 80 SLA 1996)

Revisors Notes - Under Sec. 2, ch. 11, SLA 1989 and AS 01.05.031 "Alaska State Housing Authority" was substituted for "Alaska State Building Authority" in 1989.

Amendment Notes - The 1996 amendment, effective January 1, 1997, in subsection (d), in the first sentence, inserted “, except as provided in AS 39.05.080(4), is filled” and, in the second sentence, added “Except as otherwise provided by law,” at the beginning and made a related stylistic change.

The 1995 amendment, effective January 1, 1996, repealed paragraph (a)(3), which read “Employment Security Advisory Council;”.

The 1994 amendment, effective May 16, 1994, repealed paragraph (a)(4), relating to the Governor's Commission on the Involvement of Young People in Government.

The first 1992 amendment, effective September 20, 1992, repealed former paragraphs (a)(5) and (a)(10), relating to the Board of Fisheries and the Board of Game, respectively.

The second 1992 amendment, effective July 1, 1992, deleted former paragraph (a)(4) relating to the Alaska State Housing Authority and renumbered the remaining paragraph.

The 1987 amendment deleted subsection (a)(6), which read "Board of Tourism."

The 1985 amendment repealed subsection (c), concerning initial appointments of board or commission members, and deleted "Initial terms date from February 1 before appointment." at the beginning of subsection (d).

Decisions - Applied in *Alaska State-Operated Sch. Sys. v. Mueller*, 536 P.2d 99 (Alaska 1975).

Cited in *Walker v. Alaska State Mtg. Ass'n*, 416 P.2d 245 (Alaska 1966); *Alaska State Hous. Auth. v. Dixon*, 496 P.2d 649 (Alaska 1972).

Collateral Refs - 63A Am. Jur. 2d, Public Officers and Employees, Sec. 36-86.

67 C.J.S., Officers, Sec. 66 et seq.

Conclusiveness of governor's decision in removing or suspending officers. 52 ALR 7; 92 ALR 998.

Constitutionality of statute providing for direct appeal or other review of orders and rulings of governor. 66 ALR 586.

Prohibition as means of controlling action of governor. 115 ALR 14; 159 ALR 627.

Legislative power to prescribe qualifications for or conditions of eligibility to constitutional office. 34 ALR2d 155.

Chapter 20 COMPENSATION AND ALLOWANCES

Sec. 39.20.180. TRANSPORTATION AND PER DIEM EXPENSES FOR MEMBERS OF BOARDS, COMMISSIONS, ETC.

Except as otherwise provided by law, the provisions in this section relating to per diem and transportation govern exclusively with respect to a member of a state board, commission, committee, judicial council, or other similar body of persons of the state organized or established under the authority of law, but excluding any other state employee other than a legislator, who is otherwise entitled by law to receive from the state payments for expenses of transportation, and for reimbursement or for per diem in lieu of reimbursement for other expenses incident to duties as such member:

(1) for transportation, the member is entitled either to the use of state transportation requests, or to be reimbursed for expenses of transportation to the same extent, in the same manner, and under the same conditions as provided for state officials and employees by the provisions of AS 39.20.110 - 39.20.170;

(2) for reimbursement for other expenses, the member is entitled to a per diem allowance prescribed by the commissioner of administration under the regulatory authority set out in AS 39.20.160 for each day or portion of a day spent in actual meeting or on authorized official business incident to duties as a member. (§ 1 ch 130 SLA 1953; am § 1 ch 34 SLA 1960; am § 1 ch 37 SLA 1962; am § 5 ch 136 SLA 1967; am § 12 ch 47 SLA 1974; am § 31 ch 85 SLA 1988)

Cross References - For coverage of state board and commission members under the Worker's Compensation Act, see AS 23.30.242.

Amendment Notes - The 1988 amendment, effective June 2, 1988, deleted "from and after March 27, 1962" following "provided by law" and "and supersede all other provisions of law" following "exclusively" in the introductory language, and made a series of minor stylistic changes throughout paragraphs (1) and (2).

AG Opinions - In order to recover an allowance for nonmeeting activity, an occupational licensing board member must be engaged in an activity within the scope of the applicable board's powers. November 6, 1984 Op. Att'y Gen.

An occupational licensing board member cannot receive a per diem allowance for conducting an activity that should be performed by division personnel; any activity approved must be specifically defined by statute as a board duty and should be an activity that cannot be accomplished within the confines of a board meeting. If the task can be performed during a meeting, then per diem should not be paid for time unnecessarily spent by a board member outside a board meeting. It is important, of course, for budgetary reasons, that board activity for which per diem compensation is sought be kept to a minimum. November 6, 1984 Op. Att'y Gen.

The Alaska Power Authority may reimburse a member only for (1) time spent in actual meeting or (2) time spent on authorized official business incident to his duties as a member. April 19, 1984 Op. Att'y Gen.

Decisions - Cited in Laborers & Hod Carriers Local 341 v. Groothuis, 494 P.2d 808 (Alaska 1972).

Sec. 39.20.185. PER DIEM PROHIBITED IN COMMUNITY OF RESIDENCE.

A state official or employee who is a member of the judicial council or a state official or employee appointed by the governor to a state board, commission, or committee established under the authority of law is not entitled to per diem when the meeting or other business takes place in the community of which the member is a resident. (§ 1 ch 139 SLA 1968)

Chapter 52 - ALASKA EXECUTIVE BRANCH ETHICS ACT

Article

1. Declarations (Sec. 39.52.010)
2. Code of Ethics (Secs. 39.52.110 — 39.52.190)
3. Disclosure and Action to Prevent Violations (Secs. 39.52.210 — 39.52.260)
4. Complaints; Hearing Procedures (Secs. 39.52.310 — 39.52.390)
5. Enforcement; Remedies (Secs. 39.52.410 — 39.52.460)
6. General Provisions (Secs. 39.52.910 — 39.52.960)

Decisions - Scope. - This chapter concerns ethical violations by employees of the state executive branch, including state agencies, boards and commissions. Gates v. City of Tenakee Springs, 822 P.2d 455 (Alaska 1991).

No cause of action. - Property owner, who alleged that city officials misused city and state funds in connection with the removal of an encroachment from her property, had no cause of action, where there was no allegation that the officials were acting in any state executive capacity. Gates v. City of Tenakee Springs, 822 P.2d 455 (Alaska 1991).

Cross References. - For additional laws on conflict of interest, see AS 39.50.

Article 1 - DECLARATIONS

Section

10. Declaration of Policy

Sec. 39.52.010. DECLARATION OF POLICY.

(a) It is declared that

(1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;

(2) a code of ethics for the guidance of public officers will

(A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;

(B) improve standards of public service; and

(C) promote and strengthen the faith and confidence of the people of this state in their public officers;

(3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;

(4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;

(5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute. (§ 1 ch 87 SLA 1986; am § 80 ch 74 SLA 1998)

Effect of amendments.—Prior to January 1, 1999, subsection (a) reads as follows: “It is declared (1) that high moral and ethical standards among public officers in the executive branch are essential to the conduct of free government; and (2) that the legislature believes that a code of ethics for the guidance of public officers will discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities, will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this state in their public officers. It is further declared that holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics.”

The 1998 amendment, effective January 1, 1999, in subsection (a) rewrote paragraphs (1)-(3) and added paragraphs (4)-(7).

Article 2 - CODE OF ETHICS

Section

- | | |
|--|---|
| 110. Scope of Code | 160. Improper representation |
| 120. Misuse of official position | 170. Outside employment restricted |
| 130. Improper gifts | 180. Restrictions on employment after leaving state service |
| 140. Improper use or disclosure of information | 190. Aiding a violation prohibited |
| 150. Improper influence on state grants, contracts, leases, or loans | |

Sec. 39.52.110. SCOPE OF CODE.

(a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. The legislature further recognizes that

(1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;

(2) people who serve as public officers retain their rights to interests of a personal or financial nature; and

(3) standards of ethical conduct for members of the executive branch need to distinguish between those minor and inconsequential conflicts that are unavoidable in a free society, and those conflicts of interests that are substantial and material.

(b) Unethical conduct is prohibited, but there is no substantial impropriety if, as to a specific matter, a public officer's

(1) personal or financial interest in the matter is insignificant, or of a type that is possessed generally by the public or a large class of persons to which the public officer belongs; or

(2) action or influence would have insignificant or conjectural effect on the matter.

(c) The attorney general, designated supervisors, hearing officers, and the personnel board must be guided by this section when issuing opinions and reaching decisions. (§ 1 ch 87 SLA 1986)

Decisions - Significance of personal or financial interest. -

Substantial evidence supported the hearing officer's findings that Department of Corrections' official had neither a personal nor a financial interest in the awarding of a contract concerning the housing of minimum security prisoners to a bidder for whom she had served as vice-president of operations. *Kila, Inc. v. State*, Sup. Ct. No. Op. 4105 (File No. S-5237), P.2d (1994).

Cited in *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

Sec. 39.52.120. MISUSE OF OFFICIAL POSITION

(a) A public officer may not use, or attempt to use, an official position for personal gain, and may not intentionally secure or grant unwarranted benefits or treatment for any person.

(b) A public officer may not

(1) seek other employment or contracts through the use or attempted use of official position;

(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

(5) attempt to benefit a personal or financial interest through coercion of a subordinate or require another public officer to perform services for the private benefit of the public officer at any time;

(6) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for partisan political purposes; this paragraph does not prohibit use of the governor's residence for meetings to discuss political strategy and does not prohibit use of the communications equipment in the governor's residence so long as there is no special charge to the state for the use; in this paragraph, "for partisan political purposes"

(A) means having the intent to differentially benefit or harm a

(i) candidate or potential candidate for elective office; or

(ii) political party or group;

(B) but does not include having the intent to benefit the public interest at large through the normal performance of official duties.

(c) In addition to other provisions of this section, a public officer who is a member of the Board of Fisheries or the Board of Game may not act on a matter before the board if the public officer has not disclosed in the manner set out in AS 39.52.220 all personal or financial interests in a business or organization relating to fish or game resources.

(d) In this section, when determining whether a public officer is considered to be performing a task on government time, the attorney general and personnel board shall consider the public officer's work schedule as set by the public officer's immediate supervisor, if any. A public officer other than the governor and lieutenant governor who, during the work days, engages in political campaign activities other than minor, inconsequential, and unavoidable campaign activities shall take approved leave for the period of campaigning. (§ 1 ch 87 SLA 1986; am § 5 ch 121 SLA 1992; am §§ 81, 82 ch 74 SLA 1998)

Amendment Notes -. – Prior to January 1, 1999, subsection (b) reads as follows: “A public officer may not

“(1) seek other employment or contracts through the use or attempted use of official position;

“(2) accept, receive, or solicit compensation for the performance of official duties or responsibilities from a person other than the state;

“(3) use state time, property, equipment, or other facilities to benefit personal or financial interests;

“(4) take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest; or

“(5) attempt to benefit a personal or financial interest through coercion or subordinate.”

The 1992 amendment, effective September 20, 1992, added subsection (c).

The 1998 amendment, effective January 1, 1999, in subsection (b) added “or require another public officer to perform services for the private benefit of the public officer at any time;” at the end of paragraph (5) and added paragraph (6); and added subsection (d).

Decisions

Official action not required. – The statute prohibiting use of official position for personal gain does not require “official action,” but only that employees use their position for personal gain or to seek employment. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).

Solicitation of compensation sufficient. – Since the ethics statutes does not require that a violation involve actual or present receipt of money, solicitation of compensation, including prospective or contingent economic benefits, suffices. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000)

Cited in *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

Sec. 39.52.130. IMPROPER GIFTS.

(a) A public officer may not solicit, accept, or receive, directly or indirectly, a gift, whether in the form of money, service, loan, travel, entertainment, hospitality, employment, promise, or in any other form, that is a benefit to the officer's personal or financial interests, under circumstances in which it could reasonably be inferred that the gift is intended to influence the performance of official duties, actions, or judgment.

(b) Notice of the receipt by a public officer of a gift with a value in excess of \$150, including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30 days after the date of its receipt

(1) if the public officer may take or withhold official action that affects the giver;

or

(2) if the gift is connected to the public officer's governmental status.

(c) In accordance with AS 39.52.240, a designated supervisor may request guidance from the attorney general concerning whether acceptance of a particular gift is prohibited.

(d) The restrictions relating to gifts imposed by this section do not apply to a campaign contribution to a candidate for elective office if the contribution complies with laws and regulations governing elections and campaign disclosure.

(e) A public officer who, on behalf of the state, accepts a gift from another government or from an official of another government shall, within 60 days after its receipt, notify the Office of the Governor in writing. The Office of the Governor shall determine the appropriate disposition of the gift. In this subsection, "another government" means a foreign government or the government of the United States, another state, a municipality, or another jurisdiction.

(f) A public officer who knows or reasonably ought to know that a family member has received a gift because of the family member's connection with the public office held by the public officer shall report the receipt of the gift by the family member to the public officer's designated supervisor if the gift would have to be reported under this section if it had been received by the public officer or if receipt of the gift by a public officer would be prohibited under this section. (§ 1 ch 87 SLA 1986; am §§ 83, 84 ch 74 SLA 1998)

Effect of amendments. – Prior to January 1, 1999, subsection (b) reads as follows: “Notice of the receipt by a public officer of a gift with a value in excess of \$50, including the name of the giver and a description of the gift and its approximate value, must be provided to the designated supervisor within 30

days after the date of its receipt if the public officer may take or withhold official action that affects the giver.”

The 1998 amendment, effective January 1, 1999,. In subsection (b) substituted “\$150” for “\$50,” added the paragraph (1) designation, paragraph (2) and subsections (e) and (f).

Sec. 39.52.140. IMPROPER USE OR DISCLOSURE OF INFORMATION.

(a) A current or former public officer may not disclose or use information gained in the course of, or by reason of, the officer's official duties that could in any way result in the receipt of any benefit for the officer or an immediate family member, if the information has not also been disseminated to the public.

(b) A current or former public officer may not disclose or use, without appropriate authorization, information acquired in the course of official duties that is confidential by law. (§ 1 ch 87 SLA 1986)

Decisions. – Improper Use. – The transmittal by a public official of information regarding hydroacoustic assistance which was never disseminated to the public constituted improper use of information gained in this course of official duties. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000)

Sec. 39.52.150. IMPROPER INFLUENCE IN STATE GRANTS, CONTRACTS, LEASES, OR LOANS.

(a) A public officer, or an immediate family member, may not attempt to acquire, receive, apply for, be a party to, or have a personal or financial interest in a state grant, contract, lease, or loan if the public officer may take or withhold official action that affects the award, execution, or administration of the state grant, contract, lease, or loan.

(b) The prohibition in (a) of this section does not apply to a state grant, contract, or lease competitively solicited unless the officer

(1) is employed by the administrative unit awarding the grant, contract, or lease or is employed by the administrative unit for which the grant, contract, or lease is let; or

(2) takes official action with respect to the award, execution, or administration of the grant, contract, or lease.

(c) The prohibition in (a) of this section does not apply to a state loan if

(1) the public officer does not take or withhold official action that affects the award, execution, or administration of the loan held by the officer, or an immediate family member;

(2) the loan is generally available to members of the public; and

(3) the loan is subject to fixed eligibility standards.

(d) A public officer shall report in writing to the designated supervisor a personal or financial interest held by the officer, or an immediate family member, in a state grant, contract, lease, or loan that is awarded, executed, or administered by the agency the officer serves. (§ 1 ch 87 SLA 1986)

Decisions - Applied in *Kila, Inc. v. State*, Sup. Ct. No. Op. 4105 (File No. S-5237), P.2d (1994).

Cited in *Gates v. City of Tenakee Springs*, 822 P.2d 455 (Alaska 1991).

Sec. 39.52.160. IMPROPER REPRESENTATION.

(a) A public officer may not represent, advise, or assist a person in any matter pending before the administrative unit that the officer serves, if the representation, advice, or assistance is

(1) for compensation, unless the representation, advice, assistance, and compensation are required by statute, regulation, or court rule, or is otherwise customary; or

(2) without compensation, but rendered to benefit a personal or financial interest of the public officer.

(b) This section does not prohibit activities related to collective bargaining.

(c) This section does not preclude a nonsalaried member of a board or commission from representing, advising, or assisting in any matter in which the member has a personal or financial interest regulated by the board or commission on which the member serves, except that the member must act in accordance with AS 39.52.220. (Sec. 1 ch 87 SLA 1986)

Sec. 39.52.170. OUTSIDE EMPLOYMENT RESTRICTED.

(a) A public employee may not render services to benefit a personal or financial interest or engage in or accept employment outside the agency which the employee serves, if the outside employment or service is incompatible or in conflict with the proper discharge of official duties.

(b) A public employee rendering services for compensation, or engaging in employment outside the employee's agency, shall report by July 1 of each year the outside services or employment to the employee's designated supervisor. During the year, any change in an employee's outside service or employment activity must be reported to the designated supervisor as it occurs.

(c) The head of a principal executive department of the state may not accept employment for compensation outside the agency that the executive head serves. (§ 1 ch 87 SLA 1986; am § 85 ch 74 SLA 1998)

Effect of amendments. – The 1998 amendment, effective January 1, 1999, added subsection (c).

Notice to Decisions – Conflict of Interest. – Substantial evidence supported a finding that a consultancy created a conflict for a public official where he was hired by a Canadian governmental agency to count salmon on a river at a time when the United States and Canada were engaged in a dispute over fisheries management. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000)

Compensation. – Because current receipt of compensation is not required under this provision, the obtaining of a business license offering only a prospect of future compensation was sufficient to constitute a violation. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000)

Sec. 39.52.180. RESTRICTIONS ON EMPLOYMENT AFTER LEAVING STATE SERVICE.

(a) A public officer who leaves state service may not, for two years after leaving state service, represent, advise, or assist a person for compensation regarding a matter that was under consideration by the administrative unit served by that public officer, and in which the officer participated personally and substantially through the exercise of official action. For the purposes of this subsection, "matter" includes a case, proceeding, application, contract, or determination, but does not include the proposal or consideration of legislative bills, resolutions and constitutional amendments, or other legislative measures; or the proposal, consideration, or adoption of administrative regulations.

(b) This section does not prohibit an agency from contracting with a former public officer to act on a matter on behalf of the state.

(c) The head of an agency may waive application of (a) of this section after determining that representation by a former public officer is not adverse to the public interest. The waiver must be in writing and a copy of the waiver must be provided to the attorney general for approval or disapproval.

(d) A former governor, lieutenant governor, or head of a principal department in the executive branch may not engage in activity as a lobbyist under AS 24.45 for a period of one year after leaving service as the governor, lieutenant governor, or department head, as appropriate. This subsection does not prohibit service as a volunteer lobbyist described in AS 24.45.161 (a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission. (§ 1 ch 87 SLA 1986; am § 86 ch 74 SLA 1998)

Effect of amendments. – The 1998 amendment, effective January 1, 1999, added subsection (d).

Sec. 39.52.190. AIDING A VIOLATION PROHIBITED.

It is a violation of this chapter for a public officer to knowingly aid another public officer in a violation of this chapter. (§ 1 ch 87 SLA 1986)

Article 3 - DISCLOSURE AND ACTION TO PREVENT VIOLATIONS

Section

210. Declaration of potential violations by public employees	230. Reporting of potential violations
220. Declaration of potential violations by members of boards or commissions	240. Advisory opinions
	250. Advice to former public officers
	260. Designated supervisor's report and attorney general review
	270. Disclosure statements.

Sec. 39.52.210. DECLARATION OF POTENTIAL VIOLATIONS BY PUBLIC EMPLOYEES.

(a) A public employee who is involved in a matter that may result in a violation of AS 39.52.110 - 39.52.190 shall

(1) refrain from taking any official action relating to the matter until a determination is made under this section; and

(2) immediately disclose the matter in writing to the designated supervisor and the attorney general.

(b) A public employee's designated supervisor shall make a written determination whether an employee's involvement violates AS 39.52.110 - 39.52.190 and shall provide a copy of the written determination to the public employee and to the attorney general. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

(1) reassign duties to cure the employee's potential violation, if feasible; or

(2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.

(c) A designated supervisor may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a public employee is involved in a

matter that may result in a violation of AS 39.52.110 - 39.52.190. (§ 1 ch 87 SLA 1986; am §§ 87, 88 ch 74 SLA 1998)

Effect of Amendments. – Prior to January 1, 1999, subsections (a) and (b) read as follows: “(a) A public employee who is involved in a matter that may result in a violation of AS 39.52.110 – 39.52.190 shall

“(1) refrain from taking any official action relating to the matter until a determination is made under this section; and

“(2) immediately disclose the matter in writing to the designated supervisor.

“(b) A public employee’s designated supervisor shall make a written determination whether an employee’s involvement violates AS 39.52.110 – 39.52.190. If the supervisor determines that a violation could exist or will occur, the supervisor shall,

“(1) reassign duties to cure the employee’s potential violation, if feasible; or

“(2) direct the divestiture or removal by the employee of the personal or financial interests that give rise to the potential violation.”

The 1998 amendment, effective January 1, 1999, added “and the attorney general” at the end of paragraph (a)(2) and added “and shall provide a copy of the written determination to the public employee and to the attorney general” at the end of the first sentence in subsection (b).

Notes to Decisions – Silence is not approval of activity. – Because the ethics statute requires an employee involved in activities potentially barred by the statute to refrain from taking any official action relating to that matter until a determination is made, approval is a prerequisite to entering into any otherwise prohibited contract, and a failure to respond may not be construed as approval. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000)

Sec. 39.52.220. DECLARATION OF POTENTIAL VIOLATIONS BY MEMBERS OF BOARDS OR COMMISSIONS.

(a) A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 - 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor and to the attorney general. The supervisor shall determine whether the member's involvement violates AS 39.52.110 - 39.52.190 and shall provide a copy of the written determination to the board or commission member and to the attorney general. If a member of the board or commission objects to the ruling of the supervisor, or if the supervisor discloses an involvement requiring a determination, the members present at a meeting, excluding the involved member, shall vote on the matter. If the supervisor or a majority of the members voting determine that a violation will exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter.

(b) The designated supervisor or the board or commission may request guidance from the attorney general, in accordance with AS 39.52.240, when determining whether a member of a board or commission is involved in a matter that may result in a violation of AS 39.52.110 - 39.52.190. (§ 1 ch 87 SLA 1986; am § 89 ch 74 SLA 1998)

Effects of amendment. – Prior to January 1, 1999, subsection (a) reads as follows: “A member of a board or commission who is involved in a matter that may result in a violation of AS 39.52.110 – 39.52.190 shall disclose the matter on the public record and in writing to the designated supervisor. The supervisor shall determine whether the member’s involvement violates AS 39.52.110 – 39.52.190. If a member of the board or commission objects to the ruling of the supervisor, or if the supervisor discloses an involvement requiring

a determination, the members present at the meeting, excluding the involved member, shall vote on the matter. If the supervisor or a majority of members voting determine that a violation will exist if the member continues to participate, the member shall refrain from voting, deliberating, or participating in the matter.

The 1998 amendment, effective January 1, 1999, in subsection (a) added “and to the attorney general” at the end of the first sentence and added “and shall provide a copy of the written determination to the board or commission member and to the attorney general” at the end of the second sentence.

Sec. 39.52.230. REPORTING OF POTENTIAL VIOLATIONS.

A person may report to a public officer's designated supervisor, under oath and in writing, a potential violation of AS 39.52.110 - 39.52.190 by the public officer. The supervisor shall provide a copy of the report to the officer who is the subject of the report and to the attorney general, and shall review the report to determine whether a violation may exist. The supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor determines that the matter may result in a violation of AS 39.52.110 - 39.52.190. (§ 1 ch 87 SLA 1986; am § 90 ch 74 SLA 1998)

Effects of amendment. – Prior to January 1, 1999, this section read as follows: “A person may report to a public officer’s designated supervisor, under oath and in writing, a potential violation of AS 39.52.190 – 39.52.190 by the public officer. The supervisor shall provide a copy of the report to the officer who is the subject of the report, and shall review the report to determine whether a violation may exist. The supervisor shall act in accordance with AS 39.52.210 or 39.52.220 if the supervisor determines that the matter may result in a violation of AS 39.52.190 – 39.52.190.”

The 1998 amendment, effective January 1, 1999, inserted “and to the attorney general” in the second sentence.”

Sec. 39.52.240. ADVISORY OPINIONS.

(a) Upon the written request of a designated supervisor or a board or commission, the attorney general shall issue opinions interpreting this chapter. The requester must supply any additional information requested by the attorney general in order to issue the opinion. Within 60 days after receiving a complete request, the attorney general shall issue an advisory opinion on the question.

(b) The attorney general may offer oral advice if delay would cause substantial inconvenience or detriment to the requesting party.

(c) The designated supervisor or a board or commission shall make a written determination based on the advice of the attorney general. If the advice of the attorney general provides more than one way for a public officer to avoid or correct a problem found under [AS 39.52.110](#) - 39.52.190, the designated supervisor or the board or commission shall, after consultation with the officer, determine the alternative that is most appropriate and advise the officer of any action required of the officer to avoid or correct the problem.

(d) A public officer is not liable under this chapter for any action carried out in accordance with a determination made under [AS 39.52.210](#) - 39.52.240 if the officer fully disclosed all relevant facts reasonably necessary to the determination.

(e) The attorney general may reconsider, revoke, or modify an advisory opinion at any time, including upon a showing that material facts were omitted or misstated in the request for the opinion.

(f) A person may rely on an advisory opinion that is currently in effect.

(g) A request for advice made under (a) of this section is confidential.

(h) The attorney general shall post on the Alaska Online Public Notice System ([AS 44.62.175](#)), with sufficient deletions to prevent disclosure of the persons whose identities are confidential under (g) of this section, the advisory opinions issued under this section that the attorney general determines to be of major import because of their general applicability to executive branch officers. (§ 1 ch 87 SLA 1986; am § 2 ch 54 SLA 2000)

Effect of Amendments. – The 2000 amendment effective May 12, 2000, substituted “shall post on the Alaska Online Public Notice System (AS 44.62.175)” for “shall publish in the Alaska Administrative Journal” in subsection (h).

Decisions - Opinion not required. - In the absence of any personal or financial interest in the contested contract, and given the fact that state official did not participate in or influence the contract award process, official was not required to contact the Attorney General regarding the alleged conflict of interest. *Kila, Inc. v. State*, Sup. Ct. No. Op. 4105 (File No. S-5237), P.2d (1994).

Sec. 39.52.250. ADVICE TO FORMER PUBLIC OFFICERS.

(a) A former public officer may request, in writing, an opinion from the attorney general interpreting this chapter. The attorney general shall give advice in accordance with AS 39.52.240(a) or (b) and publish opinions in accordance with AS 39.52.240(h).

(b) A former public officer is not liable under this chapter for any action carried out in accordance with the advice of the attorney general issued under this section, if the public officer fully disclosed all relevant facts reasonably necessary to the issuance of the advice. (§ 1 ch 87 SLA 1986)

Sec. 39.52.260. DESIGNATED SUPERVISOR'S REPORT AND ATTORNEY GENERAL REVIEW.

(a) A designated supervisor shall quarterly submit a report to the attorney general which states the facts, circumstances, and disposition of any disclosure made under AS 39.52.210 - 39.52.240.

(b) The attorney general shall review determinations reported under this section. The attorney general may request additional information from a supervisor concerning a specific disclosure and its disposition.

(c) The report prepared under this section is confidential and not available for public inspection unless formal proceedings under AS 39.52.350 are initiated based on the report. If formal proceedings are initiated, the relevant portions of the report are public documents open to inspection. The attorney general shall, however, make available to the public a summary of the reports received under this section, with sufficient deletions to prevent disclosure of a person's identity.

(d) The attorney general shall submit to the personnel board a copy of the quarterly reports received from designated supervisors under (a) of this section together with a report on the attorney general's review conducted under (b) of this section. (§ 1 ch 87 SLA 1986; am § 91 ch 74 SLA 1998)

Affects of amendments. – the 1998 amendment, effective January 1, 1999, added subsection (d).

Sec. 39.52.270. Disclosure statements.

(a) A public officer required to file a disclosure statement under this chapter shall meet the requirements of this subsection in making the disclosure. When the public officer files a disclosure statement under this chapter, the public officer signing the disclosure shall certify that, to the best of the public officer's knowledge, the statement is true, correct, and complete. The disclosure must state that, in addition to any other penalty or punishment that may apply, a person who submits a false statement that the person does not believe to be true is punishable under AS 11.56.200 - 11.56.240.

(b) A designated supervisor who receives a disclosure statement under AS 39.52.110 - 39.52.220 shall review it. If the designated supervisor believes that there is a possibility that the activity or situation reported in a disclosure statement filed under AS 39.52.110 - 39.52.190 may result in a violation of this chapter, the designated supervisor shall take appropriate steps under AS 39.52.210 - 39.52.240. Failure of the designated supervisor to proceed under AS 39.52.210 - 39.52.240 does not relieve the public officer of the public officer's obligations under those statutes.

(c) In this section, "disclosure statement" means a report or written notice filed under AS 39.52.110 - 39.52.220. (§ 92 ch 74 SLA 1998)

Effective dates. – Section 108, ch 74, SLA 1998 makes this section effective January 1, 1999.

Article 4 - COMPLAINTS; HEARING PROCEDURES

Section		Section	
310.	Complaints	350.	Probable cause for hearing
320.	Dismissal before formal proceedings	360.	Hearings
330.	Corrective or preventative action	370.	Personnel board action
335.	Summary of disposition of complaints and review by personnel board	380.	Subpoenas
340.	Confidentiality	390.	Service

Sec. 39.52.310. COMPLAINTS.

(a) The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210, 39.52.220, 39.52.250, or 39.52.260. The attorney general may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.

(b) A person may file a complaint with the attorney general regarding the conduct of a current or former public officer. A complaint must be in writing, be signed under oath, and contain a clear statement of the details of the alleged violation.

(c) If a complaint alleges a violation of AS 39.52.110 - 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board. The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office as provided in (j) of this section if the complaint is initiated during a campaign period. The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) - (i) of this section, AS 39.52.320 - 39.52.350, and 39.52.360(c) and (d). Notwithstanding AS 36.30.015 (d), the personnel board may contract for or hire independent counsel under this subsection without notifying or securing the approval of the Department of Law.

(d) The attorney general shall review each complaint filed, to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of this chapter. The attorney general may require the complainant to provide additional information before accepting the complaint. If the attorney general determines that the allegations in the complaint do not warrant an investigation, the attorney general shall dismiss the complaint with notice to the complainant and the subject of the complaint.

(e) The attorney general may refer a complaint to the subject's designated supervisor for resolution under AS 39.52.210 or 39.52.220.

(f) If the attorney general accepts a complaint for investigation, the attorney general shall serve a copy of the complaint upon the subject of the complaint, for a response. The attorney general may require the subject to provide, within 20 days after service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged violation. Misrepresentation of a material fact in a response to the attorney general is a violation of this chapter. Failure to answer within the prescribed time, or within any additional time period that may be granted in writing by the attorney general, may be considered an admission of the allegations in the complaint.

(g) If a complaint is accepted under (f) of this section, the attorney general shall investigate to determine whether a violation of this chapter has occurred. At any stage of an investigation or review, the attorney general may issue a subpoena under AS 39.52.380.

(h) A violation of this chapter may be investigated within two years after discovery of the alleged violation.

(i) The unwillingness of a complainant to assist in an investigation, the withdrawal of a complaint, or restitution by the subject of the complaint may, but need not in and of itself, justify termination of an investigation or proceeding.

(j) The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for state office received during a campaign period to the complainant unless the governor or lieutenant governor, as appropriate, permits the personnel board to assume jurisdiction under this subsection. If the personnel board receives a complaint concerning the conduct of the governor or lieutenant governor who is a candidate during the campaign period, the personnel board shall immediately notify the subject of the complaint of the receipt of the complaint, of the suspension of the personnel board's jurisdiction during the campaign period, and of the candidate's right to waive the suspension of jurisdiction under this subsection. The candidate may, within 11 days after the personnel board mails or otherwise sends notice of the complaint to the candidate, notify the personnel board that the candidate chooses to have the personnel board proceed with the complaint under this section. If the candidate does not act within that time or if the candidate notifies the personnel board that the candidate is not waiving the suspension of jurisdiction, the personnel board shall return the complaint to the complainant with notice of the suspension of jurisdiction under this subsection and of the right of the complainant to file the complaint after the end of the campaign period.

(k) A campaign period under this section begins on the later of 45 days before a primary election in which the governor or lieutenant governor is a candidate for state office or the day on which the individual files as a candidate for state office and ends at the close of election day for the general or special election in which the individual is a candidate or on the day that the candidate withdraws from the election, if earlier. For a candidate who loses in the primary election, the campaign period ends on the day that results of the primary election showing that another individual won the election are certified. (§ 1 ch 87 SLA 1986; am §§ 93 – 945 ch 74 SLA 1998)

Effects of Amendments. – Prior to January 1, 1999, subsections (a) and (c) read as follows: “(a) The attorney general may initiate a complaint, or elect to treat as a complaint any matter disclosed under AS 39.52.210, 39.52.220, 39.52.250, or 39.52.260.

“(c) If a complaint alleges a violation of AS 39.52.110 - 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board. The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) – (I) of this section, AS 39.52.320 – 39.52.320, and 39.52.360(c) and (d).

The 1998 amendment, effective January 1, 1999, added the second sentence in subsection (a), the second and last sentences in subsection (c), and subsections (j) and (k).

Sec. 39.52.320. DISMISSAL BEFORE FORMAL PROCEEDINGS.

If, after investigation, it appears that there is no probable cause to believe that a violation of this chapter has occurred, the attorney general shall dismiss the complaint. The attorney general shall communicate disposition of the matter promptly to the complainant under AS 39.52.335 (c) and to the subject of the complaint. (§ 1 ch 87 SLA 1986; am § 96 ch 74 SLA 1998)

Effects of Amendments. – Prior to January 1, 1999, this section reads as follows: “If, after investigation, it appears that there is no probable cause to believe that a violation of this chapter has occurred, the attorney general shall dismiss the complaint and prepare and file a confidential summary with the personnel board. The attorney general shall communicate disposition of the matter promptly to the complainant and to the subject of the complaint.”

The 1998 amendment, effective January 1, 1999, deleted “and prepare and file a confidential summary with the personnel board” following “dismiss the complaint” near the middle and inserted “under AS 39.52.335(c)” near the end.

Sec. 39.52.330. CORRECTIVE OR PREVENTIVE ACTION.

After determining that the conduct of the subject of a complaint does not warrant a hearing under AS 39.52.360, the attorney general shall recommend action to correct or prevent a violation of this chapter. The attorney general shall communicate the recommended action to the complainant and the subject of the complaint. The subject of the complaint shall comply with the attorney general's recommendation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.335. SUMMARY OF DISPOSITION OF COMPLAINTS AND REVIEW BY PERSONNEL BOARD.

(a) When the attorney general initiates or receives a complaint under AS 39.52.310, the attorney general shall immediately forward a copy of the complaint to the personnel board.

(b) Each month, the attorney general shall file a report with the personnel board concerning the status of each pending complaint and the resolution of complaints that have been closed since the previous report.

(c) If a complaint is dismissed under AS 39.52.320 or resolved under AS 39.52.330, the attorney general shall promptly prepare a summary of the matter and provide a copy of the summary to the personnel board and the complainant. The summary is confidential unless the

(1) dismissal or resolution agreed to under AS 39.52.320 or 39.52.330 is public;

or

(2) superior court makes the matter public under (h) of this section.

(d) Within 15 days after receipt of a summary under this section, a complainant may file comments with the personnel board regarding the disposition of the complaint.

(e) At its next regular meeting that begins more than 15 days after receipt of a summary under this section, the personnel board shall review the summary and comments, if any, filed by the complainant. The personnel board may compel the attendance of the subject of the complaint or the complainant at the meeting and may compel the production of documents. Attendance may be by teleconference. The attorney general or the attorney general's designee shall be available to respond to questions from the personnel board concerning the disposition of the complaint.

(f) After review of the summary, the personnel board may issue a report on the disposition of the complaint. If the matter is confidential and the board determines that publication of the name of the subject is in the public interest, the report may include a recommendation that the matter be made public.

(g) If the summary is confidential under (c) of this section,

(1) comments filed by the complainant, if any, are confidential;

(2) the personnel board shall conduct the review of the summary in executive session; and

(3) the personnel board report, if any, is confidential; the personnel board shall make available to the public an expurgated copy of a confidential report with sufficient deletions and editing to prevent disclosure of the identity of the persons involved in the matter.

(h) If the disposition of a complaint is not made public and the personnel board report under (f) of this section includes a recommendation that the matter be made public, an interested party may file an action against the state in superior court requesting that the court make public the complaint, the attorney general's disposition of the complaint, and the personnel board report. The court may order the matter or portions of the matter made public if the court determines that

(1) the dismissal or resolution of the complaint was clearly contrary to the requirements of this chapter;

(2) one or more of the allegations in the information to be released is supported by substantial evidence;

(3) the matter concerns the public interest; and

(4) release of the information will not infringe on any protected rights or liberties of the subject. (§ 97 ch 74 SLA;1998)

Effective dates. – Section 108, ch 74, SLA 1998 makes this section effective January 1, 1999.

Sec. 39.52.340. CONFIDENTIALITY.

(a) Except as provided in AS 39.52.335, before the initiation of formal proceedings under AS 39.52.350, the complaint and all other documents and information regarding an investigation conducted under this chapter or obtained by the attorney general during the investigation are confidential and not subject to inspection by the public. In the case of a complaint concerning the governor, lieutenant governor, or attorney general, all meetings of the personnel board concerning the complaint and investigation before the determination of probable cause are closed to the public. If, in the course of an investigation or probable cause determination, the attorney general finds evidence of probable criminal activity, the attorney general shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency. If the attorney general finds evidence of a probable violation of AS 15.13, the attorney general shall transmit a statement to that effect and factual findings limited to the probable violation to the Alaska Public Offices Commission. The attorney general and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation.

(b) It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation.

(c) The subject of the complaint may, in writing, waive the confidentiality protection of this section. (§ 1 ch 87 SLA 1986; am § 98 ch 74 SLA 1998)

Effect of Amendments. – Prior to January 1, 1999, subsection (a) reads as follows: “Before the initiation of formal proceedings under AS 39.52.350, information regarding an investigation conducted under this chapter, or obtained by the attorney general during the investigation, is confidential. The attorney general and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation. A person who violates this section is guilty of a class A misdemeanor.”

The 1998 amendment, effective January 1, 1999, rewrote subsection (a).

Sec. 39.52.350. PROBABLE CAUSE FOR HEARING.

(a) If the attorney general determines that there is probable cause to believe that a knowing violation of this chapter or a violation that cannot be corrected under AS 39.52.330 has occurred, or that the subject of a complaint failed to comply with a recommendation for corrective or preventive action, the attorney general shall initiate formal proceedings by serving a copy of an accusation upon the subject of the accusation. The accusation shall specifically set out the alleged violation. After service, the accusation is a public document open to inspection. Except as provided in AS 39.52.370(c), all subsequent proceedings are open to the public.

(b) The subject of the accusation shall file an answer with the attorney general within 20 days after service of the accusation, or at a later time specified by the attorney general. If the subject of the accusation fails to timely answer, the allegations are considered admitted.

(c) If the subject of the accusation denies that a violation of this chapter has occurred, the attorney general shall refer the matter to the personnel board, which shall appoint a hearing officer to conduct a hearing.

(d) If the subject of the accusation admits a violation of this chapter, the attorney general shall refer the matter to the personnel board to impose penalties under AS 39.52.410, 39.52.440, and 39.52.450, as appropriate. (§ 1 ch 87 SLA 1986)

Decisions

Prior complaint not required – The determination of whether there is a probable cause to believe that a knowing violation of the ethics statute has occurred does not necessarily require that there be a prior complaint. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).

The ethics statute does not require or imply that violations discovered during an investigation must be included in an amended complaint before they can be alleged in an accusation. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000)

Sec. 39.52.360. HEARINGS.

(a) The hearing officer may convene a prehearing conference to set a time and place for the hearing, and for stipulation as to matters of fact and to simplify issues, identify and schedule prehearing matters, and resolve other similar matters before the hearing.

(b) The hearing officer may administer oaths, hold hearings, and take testimony. Upon application by a party to the hearing, the hearing officer may issue subpoenas under AS 39.52.380.

(c) The attorney general shall present the charges before the hearing officer. At a hearing, the attorney general has the burden of demonstrating by a preponderance of the evidence that the subject of the accusation has, by act or omission, violated this chapter.

(d) The parties to a hearing are the attorney general and the subject of the accusation. The subject of an accusation may be represented by counsel. Each party has an opportunity to be heard and cross-examine witnesses, who shall testify under oath.

(e) The Administrative Procedure Act does not apply to hearings under this section, except as provided in AS 39.52.380.

(f) Technical rules of evidence do not apply, but the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. Copies of transcripts of the hearing record are available to the subject of the accusation at the subject's expense; however, upon request, a copy of the recording of the hearing must be furnished without charge to the subject of the accusation.

(g) At the conclusion of the formal hearing, the hearing officer may direct either or both parties to submit proposed findings of fact, conclusions of law, and recommendation to be filed within 10 days after the conclusion of the hearing.

(h) Within 30 days after the conclusion of a formal hearing, the hearing officer shall serve a written report on the personnel board and the parties, unless the personnel board grants an extension of time. The report must contain the officer's findings of fact, conclusions of law, and recommendation. The hearing officer shall submit the record to the personnel board. (§ 1 ch 87 SLA 1986)

Decisions

Use of parties proposed findings – Subsection (g) implicitly authorizes use of parties' findings in formulating findings and conclusions. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000)

Sec. 39.52.370. PERSONNEL BOARD ACTION.

(a) Within 10 days after receipt of the hearing officer's report, either party may protest the officer's findings of fact, conclusions of law, and recommendation, and, if a protest is filed, shall serve a copy on the other party. Oral argument before the personnel board must be provided only if requested by either party. The board chair shall set the deadline for submission of requests for oral argument, and set the dates for submission of briefs and oral argument before the board, if requested.

(b) The board may issue subpoenas under AS 39.52.380, and may, for good cause shown, augment the hearing record, in whole or in part, or hold a hearing de novo.

(c) The personnel board shall review each report submitted by a hearing officer and shall either adopt or amend the findings of fact, conclusions of law, and recommendation of the officer. Deliberations of the personnel board must be conducted in sessions not open to the public.

(d) If the personnel board determines that a violation occurred, it may impose the penalties in AS 39.52.410, 39.52.440, and 39.52.450, as appropriate. If the board determines that no violation occurred, the board shall issue a written order of dismissal.

(e) The personnel board secretary shall promptly notify the parties and the public officer's designated supervisor of the board's action.

(f) The subject of the accusation may appeal the personnel board's decision by filing an appeal in the superior court as provided in the Alaska Rules of Appellate Procedure. (§ 1 ch 87 SLA 1986)

Sec. 39.52.380. SUBPOENAS.

(a) As provided in AS 39.52.310(g), 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained under AS 39.52.310(c), a hearing officer, the subject of an accusation, and the personnel board may summon witnesses and require the production of records, books, and papers by the issuance of subpoenas.

(b) Subpoenas must be served in the manner prescribed by AS 44.62.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or refusal to obey a subpoena issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the subpoena in the same manner as prescribed for obedience to a subpoena issued by the court. (§ 1 ch 87 SLA 1986)

Sec. 39.52.390. SERVICE.

Service of an accusation must be accomplished in accordance with Rule 4 of the Alaska Rules of Civil Procedure. Service of any other pleading, motion, or other document must be accomplished in accordance with Rule 5 of the Alaska Rules of Civil Procedure. (§ 1 ch 87 SLA 1986)

Article 5 - ENFORCEMENT; REMEDIES

Section

410. Violations; penalties for misconduct
 420. Disciplinary action for violation
 430. Actions voidable
 440. Civil penalties

450. Payment of twice the financial benefit
 460. Criminal sanctions additional

Sec. 39.52.410. VIOLATIONS; PENALTIES FOR MISCONDUCT.

(a) If the personnel board determines that a public employee has violated this chapter, it
 (1) shall order the employee to stop engaging in any official action related to the violation;
 (2) may order divestiture, establishment of a blind trust, restitution, or forfeiture;
 and
 (3) may recommend that the employee's agency take disciplinary action, including dismissal.

(b) If the personnel board determines that a nonsalaried member of a board or commission has violated this chapter, it (1) shall order the member to refrain from voting, deliberating, or participating in the matter; (2) may order restitution; and (3) may recommend to the appropriate appointing authority that the member be removed from the board or commission. A violation of this chapter is grounds for removal of a board or commission member for cause. If the personnel board recommends that a board or commission member be removed from office, the appointing authority shall immediately act to remove the member from office.

(c) If the personnel board determines that a former public officer has violated this chapter, it shall
 (1) issue a public statement of its findings, conclusions, and recommendation; and
 (2) request the attorney general to exercise all legal and equitable remedies available to the state to seek whatever relief is appropriate.

(d) If the personnel board finds a violation of this chapter by a public officer removable from office only by impeachment, it shall file a report with the president of the Senate, with its finding. The report must contain a statement of the facts alleged to constitute the violation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.420. DISCIPLINARY ACTION FOR VIOLATION.

(a) In addition to any other cause an agency may have to discipline a public employee, an agency may reprimand, demote, suspend, discharge, or otherwise subject an employee to agency disciplinary action commensurate with the violations of this chapter. This section does not prohibit the review of a disciplinary action in the manner prescribed by an applicable collective bargaining agreement or personnel statute or rule.

(b) An agency may initiate appropriate disciplinary action in the absence of an accusation under this chapter or during the pendency of a hearing or personnel board action. (§ 1 ch 87 SLA 1986)

Sec. 39.52.430. ACTIONS VOIDABLE.

(a) In addition to any other penalty provided by law, a state grant, contract, or lease entered into in violation of this chapter is voidable by the state. In a determination under this section of whether to void a grant, contract, or lease, the interests of third parties who could be damaged may be taken into account. The attorney general shall give notice of intent to void a state grant, contract, or lease under this section no later than 30 days after the personnel board's determination of a violation under this chapter.

(b) In addition to any other penalty provided for by law, the state may require a state loan received in violation of this chapter to become immediately payable.

(c) Any state action taken in violation of this chapter is voidable, except that the interests of third parties and the nature of the violation may be taken into account. The attorney general may pursue any other available legal and equitable remedies.

(d) The attorney general may recover any fee, compensation, gift, or benefit received by a person as a result of a violation of this chapter by a current or former public officer. Action to recover under this subsection must be brought within two years after discovery of the violation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.440. CIVIL PENALTIES.

The personnel board may impose on a current or former public officer civil penalties not to exceed \$5,000 for a violation of this chapter. A penalty imposed under this section is in addition to and not instead of any other penalty that may be imposed according to law. (§ 1 ch 87 SLA 1986)

Decisions

Reasonable and appropriate penalties – Assessed penalties were reasonable and appropriate where they bore a financial and mathematical relationship to the amount of profit a public official derived from his activities and where they fell well within the range of penalties authorized by statute. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000)

Sec. 39.52.450. PAYMENT OF TWICE THE FINANCIAL BENEFIT.

The personnel board may, in addition to the civil penalties described in this chapter, require a current or former public officer who has financially benefited a person in violation of this chapter to pay to the state up to twice the amount that the person realized from the violation. (§ 1 ch 87 SLA 1986)

Sec. 39.52.460. CRIMINAL SANCTIONS ADDITIONAL.

To the extent that violations under this chapter are punishable in a criminal action, that sanction is in addition to the civil remedies set out in this chapter. (§ 1 ch 87 SLA 1986)

Article 6 - GENERAL PROVISIONS

Section

910. Applicability
920. Agency policies
930. Cooperation

940. Construction
950. Regulations
960. Definitions

Sec. 39.52.910. APPLICABILITY.

(a) Except as specifically provided, this chapter applies to all public officers within executive-branch agencies, including members of boards or commissions. This chapter does not apply to a former public officer of an executive-branch agency unless a provision specifically states that it so applies. This chapter does not apply to legislators covered by AS 24.60.

(b) The provisions of this chapter supersede the common law on conflicts of interests that may apply to a public officer of an executive-branch agency and any personnel rules relating to conflicts of interests, excluding nepotism, adopted under AS 39.25. However, nothing in this chapter precludes a prosecution under an applicable criminal statute nor prevents enforcement of any other state law that imposes a stricter standard of ethical conduct on public officers.

(c) The provisions of this chapter are not subject to negotiation by collective bargaining under AS 23.40. (§ 1 ch 87 SLA 1986)

Cross References - For provisions related to nepotism, see AS 39.90.020.

Sec. 39.52.920. AGENCY POLICIES.

Subject to the review and approval of the attorney general, an agency may adopt a written policy that, in addition to the requirements of this chapter, limits the extent to which a public officer in the agency or an administrative unit of the agency may

(1) acquire a personal interest in an organization or a financial interest in a business or undertaking that may benefit from official action taken or withheld by the agency or unit;

(2) have a personal or financial interest in a state grant, contract, lease, or loan administered by the agency or unit; or

(3) accept a gift. (§ 1 ch 87 SLA 1986)

Sec. 39.52.930. COOPERATION.

All agencies and instrumentalities of the state shall cooperate fully with the attorney general and the personnel board in the performance of their duties under this chapter. (§ 1 ch 87 SLA 1986)

Sec. 39.52.940. CONSTRUCTION.

This chapter shall be construed to promote high standards of ethical conduct in state government. (§ 1 ch 87 SLA 1986)

Sec. 39.52.950. REGULATIONS.

The attorney general may adopt regulations under the Administrative Procedure Act necessary to interpret and implement this chapter. (§ 1 ch 87 SLA 1986)

Sec. 39.52.960. DEFINITIONS.

In this chapter, unless the context requires otherwise,

(1) "administrative unit" means a branch, bureau, center, committee, division, fund, office, program, section, or any other subdivision of an agency;

(2) "agency" means a department, office of the governor, or entity in the executive branch, including but not limited to the University of Alaska, public or quasi-public corporations, boards or commissions, and the Alaska Railroad Corporation;

(3) "benefit" means anything that is to a person's advantage or self-interest, or from which a person profits, regardless of the financial gain, including any dividend, pension, salary, acquisition, agreement to purchase, transfer of money, deposit, loan or loan guarantee, promise to pay, grant, contract, lease, money, goods, service, privilege, exemption, patronage, advantage, advancement, or anything of value;

(4) [See delayed amendment note]. "board or commission" means a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, including the Alaska Railroad, but excluding members of a negotiated regulation making committee under AS 44.62.710 - 44.62.800;

(5) "business" includes a corporation, company, firm, partnership, sole proprietorship, trust or foundation, or any other individual or entity carrying on a business, whether operated for profit or non-profit;

(6) "child" includes a biological child, an adoptive child, and a stepchild;

(7) "compensation" means any money, thing of value, or economic benefit conferred on or received by a person in return for services rendered or to be rendered by the person for another;

(8) "designated supervisor" or "supervisor" means

(A) the commissioner of each department in the executive branch, for public employees within the department;

(B) the president of the University of Alaska, for university employees;

(C) the attorney general, for the governor and lieutenant governor;

(D) the executive director of a board or commission for the staff of the board or commission;

(E) the chair or acting chair of the board or commission, for the members and the executive director of a board or commission; and

(F) the governor, for commissioners and for other public officers not included in (A) - (E) of this paragraph; or

(G) a public officer designated by a commissioner, the university president, or the governor to act as the supervisor if the name and position of the officer designated has been reported to the attorney general;

(9) "financial interest" means

(A) an interest held by a public officer or an immediate family member, which includes an involvement or ownership of an interest in a business, including a property ownership, or a professional or private relationship, that is a source of income, or from which, or as a result of which, a person has received or expects to receive a financial benefit;

(B) holding a position in a business, such as an officer, director, trustee, partner, employee, or the like, or holding a position of management;

(10) "gain" includes actual or anticipated gain, benefit, profit, or compensation;

(11) "immediate family member" means

(A) the spouse of the person;

(B) another person cohabiting with the person in a conjugal relationship that is not a legal marriage;

(C) a child, including a stepchild and an adoptive child, of the person;

(D) a parent, sibling, grandparent, aunt, or uncle of the person; and

(E) a parent or sibling of the person's spouse;

(12) "instrumentality of the state" means a state agency or administrative unit, whether in the legislative, judicial, or executive branch, including such entities as the University of Alaska, the Alaska Railroad, and any public or quasi-public corporations, boards, or commissions; the term includes municipalities;

(13) "nonsalaried member of a board or commission" means a member of a board or commission who is not a public employee by virtue of membership on a board or commission; receipt of per diem, nominal compensation for attendance at meetings, and travel expense reimbursement does not make a member of a board or commission a public employee for purposes of this chapter;

(14) "official action" means a recommendation, decision, approval, disapproval, vote, or other similar action, including inaction, by a public officer;

(15) "organization" includes a group, association, society, political party, or other entity made up of two or more persons, whether operated for profit or nonprofit;

(16) "parent" includes a biological parent, an adoptive parent, and a step-parent of the public officer;

(17) "person" includes a natural person, a business, and an organization;

(18) "personal interest" means an interest held or involvement by a public officer, or the officer's immediate family member or parent, including membership, in any organization, whether fraternal, nonprofit, for profit, charitable, or political, from which, or as a result of which, a person or organization receives a benefit;

(19) "personnel board" or "board" means the personnel board established in AS 39.25.060;

(20) "public employee" or "employee" means a permanent, probationary, seasonal, temporary, provisional, or nonpermanent employee of an agency, whether in the classified, partially exempt, or exempt service;

(21) "public officer" or "officer" means

(A) a public employee;

(B) a member of a board or commission; and

(C) a state officer designated by the governor to act as trustee of the trust or a person to whom the trustee has delegated trust duties; in this paragraph, "trust" has the meaning given in AS 37.14.450;

(22) "source of income" means an entity for which service is performed for compensation or which is otherwise the origin of payment; if the person whose income is being reported is employed by another, the employer is the source of income; if the person is self-employed by means of a sole proprietorship, partnership, professional corporation, or a corporation in which the person, the person's spouse or child, or a combination of them, holds a controlling interest, the "source" is the client or customer of the proprietorship, partnership, or corporation; if the entity which is the origin of payment is not the same as the client or customer for whom the service is performed, both are considered the source. (§ 1 ch 87 SLA 1986; am § 4 ch 1 FSSLA 1992; am §§ 99-101 ch 74 SLA 1998; am §§ 5, 6 ch 117 SLA 1998.)

Amendment Notes – From June 23, 1998 until January 1, 1999, paragraph (4) reads as follows: “ ‘board or commission’ means a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, but excluding the

Alaska Railroad and member of a negotiated regulation making committee under AS 44.62.710 – 44.62.800;”.

Under §§ 6 and 9, ch 117, SLA 1998, as reconciled with § 100, ch 74 SLA 1998, effective July 1, 2003, paragraph (4) will be amended to read as follows: “ ‘board or commission’ means a board, commission, authority, or board of directors of a public or quasi-public corporation, established by statute in the executive branch, including the Alaska Railroad;”. Prior to January 1, 1999, paragraphs (2) and (11) reads as follows: “(2) ‘agency’ means a department, office of the governor, or entity in the executive branch, including but not limited to the University of Alaska, public or quasi-public corporations, and boards or commissions, but excluding the Alaska Railroad Corporation;

“(11) ‘immediate family member’ means a public officer’s spouse, a relation by blood within and including the second degree of kindred, and a regular member of the officer’s household.”

The first 1998 amendment, effective January 1, 1999, substituted “and” for “but excluding” in paragraph (2) and “including” for “but excluding” in paragraph (4); and rewrote paragraph (11).

The second 1998 amendment, effective June 23, 1998, added “and members of a negotiated regulation making committee under AS 44.62.710 – 44.62.800” at the end of paragraph (4).

The 1992 amendment, effective June 19, 1992, added subparagraph (21)(C) and made related stylistic changes.

Decisions - Quoted in *Alaska Fed'n for Community Self-Reliance v. Alaska Pub. Utils. Comm'n*, 879 P.2d 1015 (Alaska 1994).

Expense reimbursement. – Seeking or receiving expense reimbursement and a contract from a foreign agency satisfied the “compensation” requirement of paragraph (7). *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).

Official Action. – The statute prohibiting use of official position for personal gain does not require “official action,” but only that employees use their position for personal gain or to seek employment. *Skvorc v. State Personnel Bd.*, 996 P.2d 1192 (Alaska 2000).